

Enrolled
Senate Bill 23

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CHAPTER

AN ACT

Relating to the regulation of real estate activities; creating new provisions; amending ORS 270.120, 696.010, 696.020, 696.026, 696.030, 696.130, 696.184, 696.186, 696.241, 696.290, 696.315, 696.385, 696.425, 696.445 and 696.890; repealing ORS 696.361; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

PROPERTY MANAGEMENT AGREEMENTS

SECTION 1. ORS 696.010 is amended to read:

696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, unless the context requires otherwise:

(1) "Associated with" means to be employed, engaged or otherwise supervised by, with respect to the relationship between:

- (a) A real estate broker and a principal real estate broker;
- (b) A licensed real estate property manager and a principal real estate broker; or
- (c) A licensed real estate property manager and another licensed real estate property manager.

(2) "Bank" includes any bank or trust company, savings bank, mutual savings bank, savings and loan association or credit union that maintains a head office or a branch in this state in the capacity of a bank or trust company, savings bank, mutual savings bank, savings and loan association or credit union.

(3)(a) "Branch office" means a business location, other than the main office designated under ORS 696.200 (1), where professional real estate activity is regularly conducted or that is advertised to the public as a place where such business may be regularly conducted.

(b) Model units or temporary structures used solely for the dissemination of information and distribution of lawfully required public reports shall not be considered branch offices. A model unit means a permanent residential structure located in a subdivision or development used for such dissemination and distribution, so long as the unit is at all times available for sale, lease, lease option or exchange.

(4) "Compensation" means any fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.

(5) "Competitive market analysis" means a method or process used by a real estate licensee in pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for

the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive market analysis may be expressed as an opinion of the value of the real estate in a contemplated transaction. Competitive market analysis may include but is not limited to an analysis of market conditions, public records, past transactions and current listings of real estate.

(6) "Expired" means, in the context of a real estate licensee, that the license has not been renewed in a timely manner, but may still be renewed.

(7) "Inactive" means, in the context of a real estate licensee, that the license has been returned to the agency to be held until the licensee reactivates the license or the license expires or lapses.

(8) "Lapsed" means, in the context of a real estate licensee, that the license has not been renewed in a timely manner and is not eligible for renewal.

(9) "Letter opinion" has the meaning given that term in ORS 696.294.

(10) "Licensed real estate property manager" means an individual who holds an active real estate property manager's license issued under ORS 696.022.

(11) "Management of rental real estate" means:

(a) Representing the owner of real estate in the rental or lease of the real estate and includes but is not limited to:

(A) Advertising the real estate for rent or lease;

(B) Procuring prospective tenants to rent or lease the real estate;

(C) Negotiating with prospective tenants;

(D) Accepting deposits from prospective tenants;

(E) Checking the qualifications and creditworthiness of prospective tenants;

(F) Charging and collecting rent or lease payments;

(G) Representing the owner in inspection or repair of the real estate;

(H) Contracting for repair or remodeling of the real estate;

(I) Holding trust funds or property received in managing the real estate and accounting to the owner for the funds or property;

(J) Advising the owner regarding renting or leasing the real estate;

(K) Providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate;

(L) Providing copies of records of acts performed on behalf of the owner of the real estate; and

(M) Offering or attempting to do any of the acts described in this paragraph for the owner of the real estate; or

(b) Representing a tenant or prospective tenant when renting or leasing real estate and includes but is not limited to:

(A) Consulting with tenants or prospective tenants about renting or leasing real estate;

(B) Assisting prospective tenants in renting or leasing real estate;

(C) Assisting prospective tenants in qualifying for renting or leasing real estate;

(D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate and holding the funds in trust for the prospective tenants;

(E) Representing tenants or prospective tenants renting or leasing real estate; and

(F) Offering or attempting to do any of the acts described in this paragraph for a tenant or prospective tenant.

(12) "Nonlicensed individual" means an individual:

(a) Who has not obtained a real estate license; or

(b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.

(13) "Principal real estate broker" means:

(a) An individual who holds an active license as a principal real estate broker; or

(b) A sole practitioner who conducted professional real estate activity as a sole practitioner prior to January 1, 2010.

(14) “Professional real estate activity” means any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists, offers, attempts or agrees to list real estate for sale;
- (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;
- (f) Auctions, offers, attempts or agrees to auction real estate;
- (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;
- (h) Engages in management of rental real estate;
- (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate;
- (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;
- (L) Except as otherwise provided in ORS 696.030 [(1)(L)] (12), advises, counsels, consults or analyzes in connection with real estate values, sales or dispositions, including dispositions through eminent domain procedures;
- (m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real estate by an entity if the purpose of the entity is investment in real estate; or
- (n) Performs real estate marketing activity as described in ORS 696.600.

(15) **“Property management agreement” means a written contract for the management of rental real estate between a real estate property manager and the owner of the rental real estate.**

[(15)] (16) “Real estate” includes leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the real property is situated in this state or elsewhere.

[(16)] (17) “Real estate broker” means an individual who engages in professional real estate activity and who holds an active license as a real estate broker.

[(17)] (18) “Real estate licensee” means an individual who holds an active license as a real estate broker, principal real estate broker or real estate property manager.

[(18)] (19) “Real estate property manager” means a real estate licensee who engages in the management of rental real estate and is a licensed real estate property manager, a principal real estate broker or a real estate broker who is associated with and supervised by a principal real estate broker.

[(19)] (20) “Registered business name” means a name registered with the Real Estate Agency under which the individual registering the name engages in professional real estate activity.

[(20)] (21) “Sole practitioner” means a real estate broker conducting professional real estate activity not in conjunction with other real estate brokers or principal real estate brokers and who, prior to January 1, 2010:

- (a) Acquired three years of active experience as a real estate broker; or
- (b) Acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and successfully completed the real estate broker’s examination required by rule of the agency.

SECTION 2. ORS 696.890 is amended to read:

696.890. (1) As used in this section:

(a) "Management of rental real estate" has the meaning given that term in ORS 696.010.

(b) "Property management agreement" has the meaning given that term in ORS 696.010.

~~[(b)]~~ (c) "Real estate property manager" has the meaning given that term in ORS 696.010.

(2) A real estate property manager who represents a property owner, for compensation, in the management of rental real estate is the property owner's agent.

(3) A real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.

~~[(3)]~~ (4) A real estate property manager owes the property owner the following affirmative duties:

(a) To deal honestly and in good faith;

(b) To disclose material facts known by the property manager and not apparent or readily ascertainable to the owner;

(c) To exercise reasonable care and diligence;

(d) To account in a timely manner for all funds received from or on behalf of the owner;

(e) To act in a fiduciary manner in all matters relating to trust funds;

(f) To be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest;

(g) To disclose in a timely manner to the owner any existing or contemplated conflict of interest;

(h) To advise the owner to seek expert advice on matters that are beyond the property manager's expertise; and

(i) To maintain as confidential all information from or about the owner, except under subpoena or court order, even after the agency relationship ends.

~~[(4)]~~ (5) The affirmative duties listed in subsection ~~[(3)]~~ (4) of this section may not be waived.

~~[(5)]~~ (6) Nothing in this section implies a duty beyond or in addition to those activities that are reasonably within the scope of the management of rental real estate.

SECTION 3. ORS 696.290 is amended to read:

696.290. (1)(a) **Except as provided in paragraph (b) of this subsection,** a real estate licensee may not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's compensation arising or accruing from any real estate transaction or pay a finder's fee to any person who is not a real estate licensee licensed under ORS 696.022.

(b) ~~[(However,)]~~ A real estate broker or principal real estate broker may pay a finder's fee or a share of the licensee's compensation on a cooperative sale when the payment is made to a licensed real estate broker in another state or country, provided that:

(A) The state or country in which ~~[(that)]~~ **the nonresident real estate** broker is licensed has a law permitting real estate brokers to cooperate with real estate brokers or principal real estate brokers in this state; and

(B) ~~[(That such)]~~ **The** nonresident real estate broker does not conduct in this state any acts constituting professional real estate activity and for which compensation is paid. If a country does not license real estate brokers, the payee must be a citizen or resident of the country and represent that the payee is in the business of real estate brokerage in the other country.

(2) A real estate broker associated with a principal real estate broker may not accept compensation from any person other than the principal real estate broker with whom the real estate broker is associated at the time.

(3) A principal real estate broker may not make payment to the real estate broker of another principal real estate broker except through the principal real estate broker with whom the real estate broker is associated.

(4) Nothing in this section prevents payment of compensation earned by a real estate broker or principal real estate broker while licensed~~[,]~~ because of ~~[(change of affiliation)]~~ **the real estate broker's or principal real estate broker's association with a different principal real estate**

broker or because of inactivation of the real estate broker's or principal real estate broker's license.

[(2)] (5) Nothing in subsection (1) of this section prohibits a real estate licensee who has a [written] property management agreement with the owner of a residential building or facility from authorizing the payment of a referral fee, rent credit or other compensation to an existing tenant of the owner or licensee, or a former tenant if the former tenant resided in the building or facility within the previous six months, as compensation for referring new tenants to the licensee.

[(3)(a)] (6)(a) Nothing in subsection (1) of this section prevents an Oregon real estate broker or principal real estate broker from sharing compensation on a cooperative nonresidential real estate transaction with a person who holds an active real estate license in another state or country, provided:

(A) Before the out-of-state real estate licensee performs any act in this state that constitutes professional real estate activity, the licensee and the cooperating Oregon real estate broker or principal real estate broker agree in writing that the acts constituting professional real estate activity conducted in this state will be under the supervision and control of the cooperating Oregon broker and will comply with all applicable Oregon laws;

(B) The cooperating Oregon real estate broker or principal real estate broker accompanies the out-of-state real estate licensee and the client during any property showings or negotiations conducted in this state; and

(C) All property showings and negotiations regarding nonresidential real estate located in this state are conducted under the supervision and control of the cooperating Oregon real estate broker or principal real estate broker.

(b) As used in this subsection, "nonresidential real estate" means real property that is improved or available for improvement by commercial structures or five or more residential dwelling units.

SECTION 4. The amendments to ORS 696.290 by section 3 of this 2013 Act apply to property management agreements that are entered into on or after the operative date specified in section 18 of this 2013 Act.

LICENSURE PROVISIONS

SECTION 5. ORS 696.020 is amended to read:

696.020. (1) The Real Estate Agency may issue a real estate license only to an individual.

(2) An individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter.

(3) [A real estate licensee is] **Real estate brokers and principal real estate brokers are** bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 while:

(a) Engaging in professional real estate activity; or

(b) Acting on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.

(4) A real estate licensee is bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.890, 696.990 and 696.995 while engaging in the management of rental real estate.

[(4)] (5) The agency by rule may establish provisions for a nonlicensed individual whose license is inactive or suspended and who acts on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.

SECTION 6. ORS 696.315 is amended to read:

696.315. (1) **Except as provided in subsection (2) of this section,** a real estate licensee may not knowingly permit a nonlicensed individual to engage in professional real estate activity, with or on behalf of the licensee.

(2)(a) A principal real estate broker engaging in the management of rental real estate or a licensed real estate property manager may delegate to a person who is not licensed under this chapter the authority to conduct an activity described in ORS 696.030 (9). A delegation made under this paragraph must be in writing.

(b) The principal real estate broker or licensed real estate property manager is liable for the conduct of the nonlicensed person that the principal real estate broker or licensed real estate property manager authorizes under paragraph (a) of this subsection.

SECTION 7. ORS 696.130 is amended to read:

696.130. (1)(a) If the license of [any] a real estate broker or principal real estate broker is revoked by the Real Estate Commissioner **on grounds related to professional real estate activity other than the management of rental real estate**, the commissioner may not issue a new license until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870.

(b) **If the license of a licensed real estate property manager is revoked by the commissioner, or if the license of a real estate broker or principal real estate broker is revoked by the commissioner, on grounds related to the management of rental real estate, the commissioner may not issue a new license until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and 696.890.**

(2) Notwithstanding subsection (1) of this section, the commissioner may issue the individual a limited license if, in the discretion of the commissioner, it is in the public interest to do so. The commissioner may limit a license issued under this subsection:

(a) By term;

(b) To acts subject to the supervision of a specific principal real estate broker; or

(c) By conditions to be observed in the exercise and the privileges granted.

(3) A limited license issued under this section does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license does not have the right to renewal of such license. A limited license may be suspended or revoked, or the licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301.

SECTION 8. ORS 270.120 is amended to read:

270.120. (1) In exercising certain of its functions under ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to 273.436 and 273.551, the Oregon Department of Administrative Services shall be advised by an advisory committee consisting of seven members appointed by the Governor.

(2) The advisory committee appointed under subsection (1) of this section shall consist of two members of the Legislative Assembly, one real estate licensee [under ORS 696.020] **as defined in ORS 696.010**, two persons who serve in the executive branch of state government, one person qualified as a land use planner, and one person qualified as a real estate management expert.

(3) Members of the advisory committee shall meet at such times and places and elect such officers and make such rules for the conduct of committee business as the committee may specify.

(4) Members of the advisory committee who are not members of the Legislative Assembly are entitled to compensation under ORS 292.495. Members of the advisory committee who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) Expenses of the committee shall be paid from funds appropriated to the department to carry out subsection (6) of this section.

(6)(a) The advisory committee shall advise the department on the acquisition, exchange or disposal of real property valued at \$100,000 or more.

(b) The department may request the advice of the committee involving any real property transaction valued less than \$100,000.

BUSINESS NAME REGISTRY

SECTION 9. ORS 696.026 is amended to read:

696.026. (1) The Real Estate Agency shall establish by rule a system for the registration of business names.

(2)(a) The system must require:

[(a)] (A) The [location of a business with a registered name to] **physical address associated with a registered business name** to be the main office of a principal real estate broker or licensed real estate property manager; and

[(b)] (B) [A business name registered under this section to be a] **The registered business name to be the** corporate name, professional corporate name, business corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the Office of the Secretary of State[.];

(b) **The agency may establish by rule that the registration system must:**

(A) **Identify the principal real estate broker or the licensed real estate property manager who is responsible for:**

(i) **Maintaining the registration of the business name, as described in subsection (2)(a) of this section;**

(ii) **Registering any branch offices of the registered business name; and**

(iii) **Registering any additional business names as described in subsection (9)(a) of this section.**

(B) **Maintain the information described in ORS 696.241 (4) and (6) for each clients' trust account opened, closed or transferred by a principal real estate broker or by a licensed real estate property manager who conducts professional real estate activity under the registered business name; and**

[(3)] (c) The system must allow a principal real estate broker or licensed real estate property manager to register [a branch office] **one or more branch offices** under the registered business name of the main office.

[(4)] (3) Only a principal real estate broker or licensed real estate property manager may register a business name or register a branch office under the registered business name of the main office.

(4) Only a principal real estate broker or licensed real estate property manager may control and supervise the professional real estate activity conducted under the registered business name.

(5) A business name registered under this section has no license standing.

(6) A principal real estate broker or licensed real estate property manager may conduct professional real estate activity only under:

(a) The name under which the principal broker or property manager's license was issued; or

(b) A registered business name.

(7) If a principal real estate broker or licensed real estate property manager has a registered business name:

(a) All professional real estate activity conducted by the principal broker or property manager must be conducted under the registered business name; and

(b) All professional real estate activity conducted by a [real estate broker or another licensed real estate property manager] **real estate licensee** associated with the principal broker or property manager must be conducted under the registered business name.

(8) A principal real estate broker or licensed real estate property manager who registers a business name need not be an owner or officer of any entity lawfully entitled to use or have an ownership interest in the registered business name. However, only a principal real estate broker or licensed real estate property manager may control and supervise the professional real estate activity conducted under the registered business name.

(9)(a) A principal real estate broker or licensed real estate property manager who registers a business name may register additional business names for [affiliated] **business organizations that are affiliated with the business with the registered name**, or [subsidiary] business organizations **that are subsidiaries** of the business with the registered name.

(b) *[If]* A principal real estate broker or licensed real estate property manager *[registers two or more business names under this subsection, the real estate licensee may conduct professional real estate activity separately under each registered business name]* **may conduct professional real estate activity under two or more registered business names only if the business organizations are affiliated with, or subsidiaries of, the business with the registered name.**

(10) A real estate broker or licensed real estate property manager associated with a principal real estate broker may have an ownership interest in any business through which the principal real estate broker conducts professional real estate activity, but may not control or supervise the professional real estate activity of any other real estate licensee.

(11) A nonlicensed individual may have an ownership interest in any business through which a licensed real estate property manager or principal real estate broker engages in professional real estate activity, but may not control or supervise the professional real estate activity of any real estate licensee.

(12) Two or more principal real estate brokers operating under the same registered business name who do not exercise any administrative or supervisory control over one another are solely responsible for their own professional real estate activity.

(13) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, a principal real estate broker or real estate broker associated with a principal real estate broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation. A real estate broker associated with a principal real estate broker may *[only]* receive compensation **only** from a principal real estate broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license.

EXEMPTIONS

SECTION 10. ORS 696.030 is amended to read:

696.030. *[(1)]* ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785, 696.990 and 696.995 do not apply to:

[(a)] (1)(a) A nonlicensed individual who is a full-time employee of *[a single]* **an** owner of real estate **and** whose real estate activity:

(A) Involves **only** the real estate of the employer *[and:]*; **and**

[(A)] (B)(i) Is incidental to the employee's normal, nonreal estate activities; or

[(B)] (ii) Is the employee's principal activity, but the employer's principal activity or business is not the sale, exchange, lease option or acquisition of real estate.

(b) For the purpose of this subsection, "owner of real estate" means:

(A) **An individual who has a sole ownership interest in the real estate; or**

(B) **More than one individual, each of whom has an ownership interest in the real estate, if the ownership interest is by survivorship, tenancy in common or tenancy by the entirety.**

[(b)] (2) A nonlicensed individual who acts as attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing the supervision of the closing of or supervision of the performance of a contract for the sale, leasing or exchanging of real estate if the power of attorney was executed prior to July 1, 2002, in compliance with the requirements of law at the time of execution or if:

[(A)] (a) The power of attorney is recorded in the office of the recording officer for the county in which the real estate is located;

[(B)] (b) The power of attorney specifically describes the real estate; and

[(C)] (c) The individual does not use the power of attorney as a device to engage in professional real estate activity without obtaining the necessary real estate license.

[(c)] (3) A nonlicensed individual who acts as attorney in fact under a duly executed power of attorney in which the authorized agent is the spouse of the principal, or the child, grandchild, par-

ent, grandparent, sibling, aunt, uncle, niece or nephew of the principal or of the spouse of the principal, authorizing real estate activity if the power of attorney is recorded in the office of the recording officer for the county in which the real estate to be sold, leased or exchanged is located.

[(d)] (4) A nonlicensed individual who is an attorney at law rendering services in the performance of duties as an attorney at law.

[(e)] (5) A nonlicensed individual who acts in the individual's official capacity as a receiver, a conservator, a trustee in bankruptcy, a personal representative or a trustee, or a regular salaried employee of the trustee, acting under a trust agreement, deed of trust or will.

[(f)] (6) A nonlicensed individual who performs an act of professional real estate activity under order of a court.

[(g)] (7) A nonlicensed individual who is a regular full-time employee of a single corporation, partnership, association, limited liability company or nonlicensed individual owner of real property acting for the corporation, partnership, association, limited liability company or nonlicensed individual owner in the rental or management of the real property, but not in the sale, exchange, lease option or purchase of the real property.

[(h)] (8) An individual who is a registered professional engineer or architect rendering services in performance of duties as a professional engineer or architect.

[(i)] (9) A nonlicensed individual who is employed by a [real estate broker or] principal real estate broker **engaged in the management of rental real estate or by a licensed real estate property manager** and who acts [as a manager for real estate] **on behalf of the principal real estate broker or licensed real estate property manager pursuant to a written delegation of the principal real estate broker's or licensed real estate property manager's authority, as provided by the agency by rule**, if the real estate activity of the nonlicensed individual is limited to:

- (a) Negotiating rental or lease agreements[.];
- (b) Checking tenant and credit references[.];
- (c) Physically maintaining the real estate[.];
- (d) Conducting tenant relations[.];
- (e) Collecting the rent[.];
- (f) Supervising the premises' managers [and];
- (g) Discussing financial matters relating to **the** management of the real estate with the owner;

and

(h) Receiving and disbursing trust funds in a clients' trust account under ORS 696.241.

[(j)] (10) An individual who sells or leases cemetery lots, parcels or units while engaged in the disposition of human bodies under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 or an employee of the nonlicensed individual performing similar activities.

[(k)] (11) An individual who is a salaried employee of the State of Oregon, or any of its political subdivisions, engaging in professional real estate activity as a part of such employment.

[(L)] (12) A nonlicensed individual who analyzes or provides advice regarding permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, or a regular full-time employee of the nonlicensed individual performing similar activities. This exclusion does not apply to the handling of transactional negotiations for transfer of an interest in real estate.

[(m)] (13) An individual who is a hotelkeeper or innkeeper as defined by ORS 699.005 arranging the rental of transient lodging at a hotel or inn in the course of business as a hotelkeeper or innkeeper.

[(n)] (14) An individual who is a travel agent arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a travel agent for compensation. For the purpose of this [paragraph] **subsection**, "travel agent" means a person, and employees of the person, regularly representing and selling travel services to the public directly or indirectly through other travel agents.

[(o)] (15) An individual who is a common carrier arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a common carrier. For the purpose of this [paragraph] **subsection**, “common carrier” means a person that transports or purports to be willing to transport individuals from place to place by rail, motor vehicle, boat or aircraft for hire, compensation or consideration.

[(p)] (16) An individual who is a hotel representative arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a hotel representative. For the purpose of this [paragraph] **subsection**, “hotel representative” means a person that provides reservations or sale services to independent hotels, airlines, steamship companies and government tourist agencies.

[(q)] (17) A nonlicensed individual transferring or acquiring an interest in real estate owned or to be owned by the individual.

[(r)] (18) An individual who is a general partner for a domestic or foreign limited partnership duly registered and operating within this state under ORS chapter 70 engaging in the sale of limited partnership interests and the acquisition, sale, exchange, lease, transfer or management of the real estate of the limited partnership.

[(s)] (19) An individual who is a membership camping contract broker or salesperson registered with the Real Estate Agency selling membership camping contracts.

[(t)] (20) An individual who is a professional forester or farm manager engaging in property management activity on forestland or farmland when the activity is incidental to the nonreal estate duties involving overall management of forest or farm resources.

[(u)] (21) An individual who is a registered investment adviser under the Investment Advisers Act of 1940, 15 U.S.C. §80b-1 et seq., rendering real estate investment services for the office of the State Treasurer or the Oregon Investment Council.

[(v)] (22) A nonlicensed individual who refers a new tenant for compensation to a real estate licensee acting as the property manager for a residential building or facility while the individual resides in the building or facility or within six months after termination of the individual’s tenancy.

[(w)] (23) A nonlicensed individual who gives an opinion in an administrative or judicial proceeding regarding the value of real estate for taxation or representing a taxpayer under ORS 305.230 or 309.100.

[(x)] (24) A nonlicensed individual acting as a paid fiduciary whose real estate activity is limited to negotiating [or closing a transaction] **a contract** to obtain the services of a real estate licensee.

[(y)] (25) A nonlicensed individual who is a fiduciary under a court order, without regard to whether the court order specifically authorizes real estate activity.

[(z)] (26) An individual who is a representative of a financial institution or trust company, as those terms are defined in ORS 706.008, that is attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing real estate activity, if the power of attorney is recorded in the office of the county clerk for the county in which the real estate to be sold, leased or exchanged is located.

[(aa)] (27) An individual who is the sole member or a managing member of a domestic or foreign limited liability company duly registered and operating within this state under ORS chapter 63 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the limited liability company.

[(bb)] (28) An individual who is a partner in a partnership as defined in ORS 67.005 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the partnership.

[(cc)] (29) An individual who is an officer or director of a domestic or foreign corporation duly registered and operating within this state under ORS chapter 60 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the corporation.

[(2)] *The vesting of title to real estate in more than one person by tenancy by the entirety, tenancy in common or by survivorship shall be construed as that of a single owner for the purposes of this section.*

REAL ESTATE CONTINUING EDUCATION

SECTION 11. ORS 696.184 is amended to read:

696.184. (1) A real estate continuing education provider shall:

[(a) Ensure that the courses offered by the continuing education provider that are eligible for continuing education credit meet the learning objectives for the course topic as provided by rule of the Real Estate Agency under ORS 696.182;]

[(b) Ensure that instructors who teach a real estate continuing education course that is eligible for continuing education credit under ORS 696.182 for the continuing education provider meet the requirements set forth in ORS 696.186; and]

[(c) Keep records of each course that the continuing education provider offered, the length of time of each course, the name of the instructor who taught each course and other information required by the agency. The continuing education provider shall keep the records for at least three years.]

(a) Ensure that the courses offered by the continuing education provider meet the learning objectives adopted under ORS 696.182 (4)(b);

(b) Ensure that instructors who teach a real estate continuing education course meet the requirements set forth in ORS 696.186; and

(c) Keep records of each course offered, for at least three years, in a manner and form prescribed by the Real Estate Agency by rule.

(2) *[The records kept under subsection (1) of]* **Records maintained under** this section must be open at all times for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. *[The records may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives as determined by the commissioner by rule and that complies with rules adopted by the Real Estate Agency.]* **Upon request by the commissioner, a real estate continuing education provider must produce records within 15 business days after the date of the request.**

(3) The agency may require by rule a real estate continuing education provider to submit a record maintained under this section to the agency electronically.

(4) The agency may prescribe by rule terms and conditions under which a **real estate** continuing education provider may maintain records outside this state.

SECTION 12. ORS 696.186 is amended to read:

696.186. (1) A person must have one of the following qualifications to teach a real estate continuing education course that is eligible for credit required under ORS 696.174:

(a) A bachelor's degree and two years of experience working in a field related to the topic of the course;

(b) Six years of experience working in a field related to the topic of the course;

(c) A total of six years of any combination of college-level coursework and experience working in a field related to the topic of the course;

(d) A designation by a professional real estate organization as determined by rule of the Real Estate Agency and two years of college-level coursework;

(e) A designation by an association of real estate educators of competency as an instructor; **or**

[(f) Successful completion of an instructor training course approved by the Real Estate Board and two years of experience working in a field related to the topic of the course; or]

[(g)] **(f)** Certification or approval in good standing as a real estate instructor for the same or a similar course topic in any other state or jurisdiction.

(2) Notwithstanding subsection (1) of this section, a person may not teach a real estate continuing education course if the person:

(a) Has had a professional or occupational license related to the topic of the course revoked for disciplinary reasons, or has a professional or occupational license related to the topic of the course that is currently suspended for disciplinary reasons; or

(b) Has been determined by a state court or an administrative law judge to have violated any statute, rule, regulation or order pertaining to real estate activity in this or any other state in the preceding five years.

(3) Before a person teaches a course for a real estate continuing education provider, the continuing education provider shall require the person to sign a form in which the person attests to:

(a) Meeting one of the qualifications described in subsection (1) of this section; and

(b) Not being disqualified from teaching a course for reasons described in subsection (2) of this section.

(4) The agency, with the advice of real estate professionals and educators, shall prescribe by rule the content of the form described in subsection (3) of this section.

CLIENTS' TRUST ACCOUNT

SECTION 13. ORS 696.241 is amended to read:

696.241. (1) As used in this section, "trust funds" means money belonging to others that is received or handled by a licensed real estate property manager or principal real estate broker in the course of conducting professional real estate activity and in the real estate licensee's fiduciary capacity.

(2) A licensed real estate property manager, or a principal real estate broker **who engages in the management of rental real estate**, shall **open and** maintain in this state one or more separate federally insured bank accounts that are designated clients' trust accounts under ORS 696.245. [*Except as provided in subsection (3) of this section, a licensed real estate property manager or principal real estate broker*] **A principal real estate broker who engages in the management of rental real estate or a licensed real estate property manager** shall deposit **in a client's trust account** all trust funds received or handled by the [*licensed real estate property manager or*] principal real estate broker, **licensed real estate property manager or** [*and the*] real estate licensees subject to the supervision of the principal real estate broker [*in a clients' trust account*].

(3)(a) **A principal real estate broker who receives or handles trust funds and does not deposit the trust funds in a licensed neutral escrow depository as described in paragraph (b) of this subsection shall open and maintain in this state one or more separate federally insured bank accounts that are designated clients' trust accounts under ORS 696.245.** [*A principal real estate broker,*] Pursuant to written agreement of all parties to a real estate transaction having an interest in the trust funds, **the principal real estate broker** shall immediately place the trust funds in a clients' trust account [*as provided in subsection (2) of this section or*].

(b) A principal real estate broker may deposit trust funds in a licensed neutral escrow depository in this state.

(4) Within 10 business days after the date a clients' trust account is opened, a licensed real estate property manager or principal real estate broker shall file with the Real Estate Agency, on forms approved by the agency, the following information about the clients' trust account:

(a) The name of the bank;

(b) The account number;

(c) The name of the account;

(d) The date the account was opened; and

(e) A statement by the **licensed real estate** property manager or principal **real estate** broker authorizing the Real Estate Commissioner or the commissioner's representative to examine the clients' trust account at such times as the commissioner may direct.

(5) A principal real estate broker or licensed real estate property manager who opens a clients' trust account under subsection (2) or (3) of this section, or to whom ownership of a clients' trust account is transferred under subsection (6) of this section, is liable for all deposits and disbursements made using the clients' trust account until the principal real estate broker or licensed real estate property manager closes the account or transfers ownership of the account.

[(5)] (6) A licensed real estate property manager or principal real estate broker who closes a clients' trust account, **or to whom ownership of a client's trust account is transferred as authorized by the agency by rule**, shall notify the agency, within 10 business days after the date the account is closed **or transferred**, on a form approved by the agency.

[(6)] (7) Except for earned interest on a clients' trust account as provided in subsections [(8) and] (9) **and (10)** of this section, [*only trust funds may be held by*] a licensed real estate property manager or principal real estate broker [*in a clients' trust account*] **may not commingle any other funds with the trust funds held in a clients' trust account.**

[(7)] (8) If a licensed real estate property manager or principal real estate broker maintains a separate clients' trust account in a branch office, a separate bookkeeping system must be maintained in the branch office and a copy of the records required under ORS 696.280 must be maintained in the main office of the **licensed real estate** property manager or principal **real estate** broker.

[(8)] (9) Trust funds received by a licensed real estate property manager or principal real estate broker may be deposited by the **licensed real estate** property manager or principal **real estate** broker in a federally insured interest-bearing bank account that is designated a clients' trust account under ORS 696.245, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of the interest-bearing account do not inure to the benefit of the licensed real estate property manager or principal real estate broker unless expressly approved in writing by all parties having an interest in the trust funds before deposit of the trust funds.

[(9)] (10) With prior written notice to all parties who have an interest in the trust funds, a principal real estate broker may place trust funds received by the principal real estate broker in a real estate sales, purchase or exchange transaction in a federally insured interest-bearing bank account that is designated a clients' trust account under ORS 696.245, the earnings of which inure to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time homebuying assistance and for development of affordable housing. The principal real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

[(10)] (11) In connection with a real estate sales, purchase or exchange transaction, a principal real estate broker is not entitled to any part of any interest earnings on trust funds deposited under subsection [(8)] (9) of this section or to any part of the earnest money or other money paid to the **principal real estate** broker as part or all of the **principal real estate** broker's compensation until the transaction has been completed or terminated. The principal real estate broker and the seller shall negotiate and agree in writing to the disposition of forfeited earnest money at the time of execution by the seller of any listing agreement or earnest money agreement. An agreement about the disposition of forfeited earnest money must be initialed by the seller or immediately precede the seller's signature.

[(11)] (12) Trust funds in a clients' trust account are not subject to execution or attachment on any claim against a licensed real estate property manager or principal real estate broker.

[(12)] (13) The agency by rule shall establish an optional procedure by which a principal real estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase of real estate from a clients' trust account to the person who delivered the funds to the principal real estate broker. The procedure must allow disbursement not more than 20 days after a request is made for the disbursement. A disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

[(13)] (14) The agency may provide by rule for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed.

RULEMAKING PROCEDURES

SECTION 14. ORS 696.385 is amended to read:

696.385. The Real Estate Agency shall have the power to:

(1) Adopt a seal by which it shall authenticate its proceedings.

(2) From time to time, prepare and cause to be printed and circulated among the real estate licensees of Oregon such printed matter as it may deem helpful or educational or proper for the guidance and welfare of such licensees.

(3) Make and enforce any and all such reasonable rules as shall be deemed necessary to administer and enforce the provisions of, and enforce and discharge the duties defined in, any law with the administration or enforcement of which the agency is charged.

(4) Except as provided in subsection (5) of this section, when the agency proposes to adopt, amend or repeal a rule concerning real estate licensees, the agency shall:

(a) Submit a copy of the proposed rule to the Real Estate Board at least [45] **10** days prior to publication of the notice of intended action required under ORS 183.335 for the rule.

(b) Consider any recommendations that the board, by majority vote, makes concerning the proposed rule.

(c) Publish as part of the statement of need in the matters any written comments submitted by the board for publication under paragraph (b) of this subsection.

(5) Subsection (4) of this section does not apply to a temporary rule that is adopted, amended or suspended pursuant to ORS 183.335 (5). However, the agency shall submit to the board a copy of any proposed temporary rule as soon as practicable and, to the extent possible under the circumstances, consider any recommendations that the board may make by majority vote regarding the temporary rule.

DUTIES AND POWERS OF REAL ESTATE BOARD

SECTION 15. ORS 696.425 is amended to read:

696.425. (1) The Real Estate Board is authorized to inquire into the needs of the real estate licensees of Oregon, the functions of the Real Estate Agency and the matter of the business policy thereof, to confer with and advise the Governor as to how the agency may best serve the state and the licensees, and to make recommendations and suggestions of policy to the agency as the board may deem beneficial and proper for the welfare and progress of the licensees and of the public and of the real estate business in Oregon.

(2) The board shall [*conduct all examinations for applicants for real estate licenses, prepare or cause to be prepared the questions to be asked in the examinations and grade or cause to be graded the papers of each applicant after the completion of the examination and file a written report with the agency as to applicants taking the examination who have passed and who have failed to pass the examination. The board shall provide*] **make recommendations to the agency about** the manner and methods for conducting examinations.

(3) The board shall create or approve a **real estate** continuing education course for real estate licensees based on recent changes in real estate rule and law.

(4) The expenses of the board shall be paid from moneys available to the agency for payment of administrative expenses relating to the real estate activities of the agency.

EDUCATION AND DISCIPLINARY ACTIONS

SECTION 16. ORS 696.445 is amended to read:

696.445. (1) Pursuant to ORS 696.385 (2), the Real Estate Agency shall provide for the advancement of education and research in connection with the educational requirements for the securing of licenses for real estate licensees under ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995.

(2) The Real Estate Commissioner may assign and reassign staff in the agency to perform such duties as the commissioner considers necessary to carry out subsection (1) of this section, including but not limited to the preparation and distribution of a periodic publication to be known as the Oregon Real Estate News Journal and the preparation and publication of other printed [*matter*] **or electronic information** of an educational nature for the benefit of real estate licensees.

(3) The commissioner shall publish in the Oregon Real Estate News Journal the names and the city and state of:

- (a) Real estate **and escrow agent** licensees who have been reprimanded[, of];
- (b) Real estate and escrow agent licensees whose licenses have been suspended or revoked; and
- (c) [of] Real estate and escrow agent licensees [*who have been*] **against whom the agency has** assessed civil penalties.

(4) Each [*such*] publication [*shall*] **under subsection (3) of this section must** include:

- (a) A brief description of the situation involved and the grounds for the commissioner's action;
- or
- (b) **The complete final order issued by the agency.**

REPEALS

SECTION 17. ORS 696.361 is repealed.

OPERATIVE DATE

SECTION 18. (1) Section 4 of this 2013 Act, the amendments to ORS 270.120, 696.010, 696.020, 696.026, 696.030, 696.130, 696.184, 696.186, 696.241, 696.290, 696.315, 696.385, 696.425, 696.445 and 696.890 by sections 1 to 3 and 5 to 16 of this 2013 Act and the repeal of ORS 696.361 by section 17 of this 2013 Act become operative on July 1, 2013.

(2) The Real Estate Agency may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the agency to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the agency by section 4 of this 2013 Act, the amendments to ORS 270.120, 696.010, 696.020, 696.026, 696.030, 696.130, 696.184, 696.186, 696.241, 696.290, 696.315, 696.385, 696.425, 696.445 and 696.890 by sections 1 to 3 and 5 to 16 of this 2013 Act and the repeal of ORS 696.361 by section 17 of this 2013 Act.

UNIT CAPTIONS

SECTION 19. The unit captions used in this 2013 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 Act.

EMERGENCY CLAUSE

SECTION 20. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate February 14, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 8, 2013

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State